



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

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Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO POLLARD ENVIRONMENTAL LLC

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Pollard Environmental LLC for the purpose of resolving certain violations of environmental law and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Pollard Environmental" means Pollard Environmental LLC a limited liability company certified to do business in Virginia, located at 3530 Mayland Court, Richmond, Virginia.
8. "Property" means the property located at 6223 W. Franklin St., Henrico County, Virginia.
9. "AST" means aboveground storage tank.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Pollard Environmental is an environmental contracting company. On February 8, 2005, the company was working at 6223 W. Franklin St. (the Property) in Henrico County, Virginia to remediate a leaking aboveground storage tank.
2. On February 8, 2005, DEQ received a report of a bright blue colored water in the storm water ditch at Pepper Ave. and Monument Ave. in Henrico County. DEQ staff was aware that Pollard Environmental was working at the Property which was approximately 1 ½ blocks from the reported blue water. DEQ contacted Pollard Environmental that afternoon and was informed that the company was performing a dye study at the Property. DEQ staff visited the site of the report that afternoon and observed an intense blue water discharge from the Property and observed that the blue discharge had traveled approximately 1 ½ blocks via the storm water ditches.
3. On the morning of February 9, 2005, DEQ staff called Mr. Pollard of Pollard Environmental to request that the company vacuum the blue dye from the ditches and to provide DEQ with the MSDS sheets for the dye. In response to DEQ's request, Pollard Environmental did retain RECO Biotechnology to vacuum the blue dye from the ditches and from the septic tank that day. In explanation of the blue colored discharge, Mr. Pollard informed DEQ that the company had added a 2.5 gallon container of blue tracer dye (*Lesco Tracker*) to an out-of-use septic tank at the W. Franklin property to determine if petroleum product was collecting in the septic tank and discharging to the storm water ditch adjacent to the property.
4. On the morning of February 10, 2005, DEQ staff visited the site to evaluate the clean-up and to take photos. DEQ staff observed puddles of bright blue dye water remaining in the ditches. DEQ contacted Pollard Environmental to request further clean-up of the blue dye. The company reported that they had scheduled RECO to return to the site on the 10<sup>th</sup> to vacuum the ditches again.
5. On the morning of February 11, 2005, DEQ staff visited the site to observe if the clean-up of the blue dye was completed. DEQ staff observed intense blue water remaining in the ditches and informed Pollard Environmental that the storm water ditches need to be vacuumed until the blue dye was completely removed.

6. On February 14, 2005, Pollard Environmental sent RECO back to vacuum the site for the third time.
7. The MSDS sheet for *Lesco Tracker-Spray Indicator Dye* state: that the product is meant to be diluted in a sprayer and applied with a sprayer to show where a herbicide, pesticide, etc. has been land applied; to not allow the product to contaminate drains, sewers, streams, ditches or bodies of water; to prevent large quantities from contacting vegetation; to keep animals away from large spills; and that the product is an *Immediate (Acute) Health hazard* for skin and/or eye irritation, and gastric disturbance through ingestion by inhalation. Pollard Environmental did not alert the nearby residence of the release of the blue dye or of the potential hazards associated with the product, nor did Pollard Environmental report the unusual discharge to DEQ.
8. On March 10, 2005, the Department issued a Notice of Violation (NOV) to Pollard Environmental citing the discharge of a deleterious substance into state waters (VA Code § 62.1-44.5) and for failure to report the discharge (VA Code § 62.1-44.5.A and § 62.1-44.5.B).
9. In response to the NOV, Mr. Pollard of Pollard Environmental met with DEQ on March 25, 2005.
10. At the meeting, Mr. Pollard stated that he did not believe that the blue dye was "deleterious"; and that according to the manufacturer it is used as a dye in ponds to reduce algae growth. DEQ research indicates a different conclusion. *Lesco Hydro Blocker* is the product formulated to be used in ponds, etc. to reduce algae growth. Mr. Pollard also stated that the dye was diluted with water. DEQ received different reports of the dilution factor from Pollard Environmental. It was initially reported that the 2.5 gallon of *Lesco Tracker* dye was mixed with 400-500 gallons of water; by letter dated April 15, 2005, it was reported that the dye was mixed with 910 gallons of water. The latter determination was from the reported amount of liquid RECO recovered during the clean-up.
11. Mr. Pollard further responded to the NOV by letter dated April 15, 2005. In the letter Mr. Pollard contends that the dye is non toxic, that the MSDS sheets refer to the product in its concentrated form, that it was diluted by 910 gallons of water, that it was of aesthetic concern for the neighborhood, and that they responded within 24 hours to recover the dye.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Pollard Environmental, and Pollard Environmental while not agreeing that the discharged dye is deleterious, accept the DEQ conclusion for purposes of settling this dispute, voluntarily agrees, to pay a civil charge of \$1,600 within 30 days of the effective date of the

Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Pollard Environmental. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Pollard Environmental, for good cause shown by Pollard Environmental, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on March 10, 2005, as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Pollard Environmental admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Pollard Environmental consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pollard Environmental declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Pollard Environmental to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.

Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pollard Environmental shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Pollard Environmental shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pollard Environmental shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pollard Environmental. Notwithstanding the foregoing, Pollard Environmental agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Pollard Environmental. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pollard Environmental from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signature below, Pollard Environmental voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 2, 2006.

David K. Paylor, Director  
Department of Environmental Quality

Pollard Environmental voluntarily agrees to the issuance of this Order.

By: [Signature]  
Date: 2/1/06

Commonwealth of Virginia  
City/County of Henrico

The foregoing document was signed and acknowledged before me this 1<sup>st</sup> day of February, 2006, by John S. Pollard, who is President of Pollard Environmental.  
(title)

[Signature]  
Notary Public

My commission expires: My Commission Expires May 31, 2009